

76. (New) The device according to claim 73, wherein said chamber is a chamber other than a ventricle.

77. (New) The device according to claim 73, wherein said second portion of said structure lies adjacent an apical surface of said chamber of the natural heart.

78. (New) The device according to claim 77, wherein said chamber is a ventricle.

79. (New) The device according to claim 66, wherein said device has an inner surface and said inner surface is convex toward the surface of the natural heart.

REMARKS

Initially, Applicants thank the Examiner for the courtesies extended to Applicants' representatives during the interview conducted at the U.S. Patent and Trademark Office on November 14, 2002.

By this Amendment, Applicants have added new claims 40-79. New application claims 41, 42, 46-48, 50, 51, 63-71, 73-75, and 77-79 are identical to claims 2, 3, 5-9, 28-30, 36-41, 43-45, and 47-50, respectively, of U.S. Patent No. 6,409,760 B1 issued on June 25, 2002. New application claims 40, 43-45, 49, 52-62, 72, and 76, while not identical to claims in that '760 patent, correspond substantially to subject matter of various claims in the '760 patent, including at least patent claims 1, 4, 7, 10, 11, 15-20, 24, 34, 35, 42, and 46. New application claims 40-79 are being presented for purposes of interference.

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In the Preliminary Amendment filed with this application, Applicants presented claims 15-39 for interference purposes. Claims 15-39 are either identical to or substantially correspond to certain claims of U.S. Patent No. 6,190,408, issued on February 20, 2001. The '760 patent claims priority to the '408 patent.

Also by this Amendment, Applicants have amended claims 32 and 33 in the manner discussed with the Examiner at the November 14, 2002 personal interview. Applicants respectfully submit that the amendments to claims 32 and 33 obviate the objection under 35 U.S.C. § 132 and the rejection under 35 U.S.C. § 112, second paragraph, set forth in the Office Action dated September 27, 2002. An attached Appendix shows the changes to those claims.

In the Office Action, claims 15-32 and 34 were rejected in an obviousness type double patenting rejection in view of claims 1-12 of U.S. Patent No. 6,077,214 (the '214 patent) and claims 34-39 were rejected in an obviousness type double patenting rejection in view of claims 1-28 of U.S. Patent No. 6,165,119 (the '119 patent).

Applicants respectfully submit that both of those double patenting rejections should be withdrawn because application claims 15-32 and 34 are patentably distinct from, and not an obvious variant of, the '214 patent claims 1-12, and application claims 34-39 are patentably distinct from, and not an obvious variant of, the '119 patent claims 1-28. Nonetheless, to expedite prosecution of this application, Applicants submit herewith a Terminal Disclaimer. The filing of this Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejections set forth in the Office Action. See M.P.E.P. §804.02 *citing Quad*

Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d

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1392 (Fed. Cir. 1991) ("In legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection.") Should the need arise at a later date, Applicants reserve the right to present arguments regarding the merits of the double patenting rejections set forth in the Office Action and the obviousness of applications claims 15-32 and 34-39 in view of the '214 patent claims 1-12 and the '119 patent claims 1-28, respectively.

For at least the above reasons, Applicants respectfully request that the Examiner withdraw the outstanding objections and rejections and indicate the allowability of claims 15-79. If for any reason the Examiner does not believe that claims 15-79 are in condition for allowance, the Examiner is invited to telephone the undersigned at (202) 408-4445 in an attempt to resolve any outstanding issues with respect to the allowability of the claims.

Upon receiving confirmation from the Examiner that claims 15-79 are in condition for allowance, Applicants plan to file a Request for Interference under 37 C.F.R. §1.607. Applicants therefore request that the Examiner telephone the undersigned at (202) 408-4445 to indicate that the claims are in condition for allowance so that Applicants can proceed with filing that Request.

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If there is any fee due in connection with the filing of this Amendment that is not otherwise provided with this filing, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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Dated: January 24, 2003

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APPENDIX

This Appendix is being filed in accordance with 37 C.F.R. § 1.121(c)(1)(ii) to show the amendments made to claims 32 and 33. Additions are shown by underlined text and deletions are shown by bracketed text. This Appendix is not intended to be part of this application.

32. (Amended) The device of claim 15, wherein the connector [comprises a first connector] is configured to be positioned adjacent [the endocardium] a surface of the chamber.

33. (Amended) The device of claim 32, wherein the [second] connector is curved.

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